

# **Digests Of Unpublished Decisions Of The Comptroller General Of The United States- OGC/Index-Digest Section**

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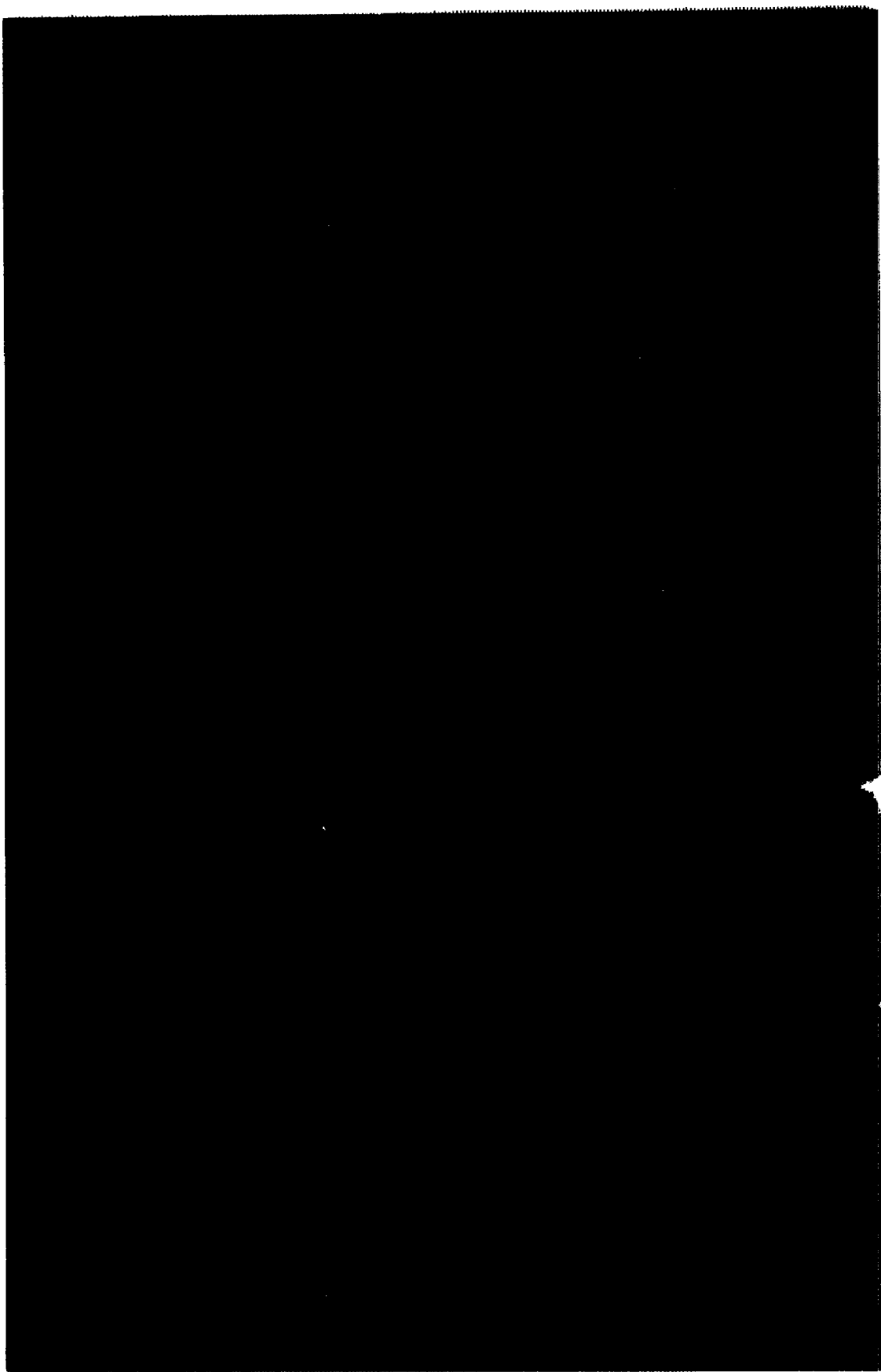
**NOVEMBER 1984**

Volume I  
Number 2

**GAO**

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United States General Accounting Office



# **UNITED STATES GENERAL ACCOUNTING OFFICE**

**CHARLES A. BOWSHER**

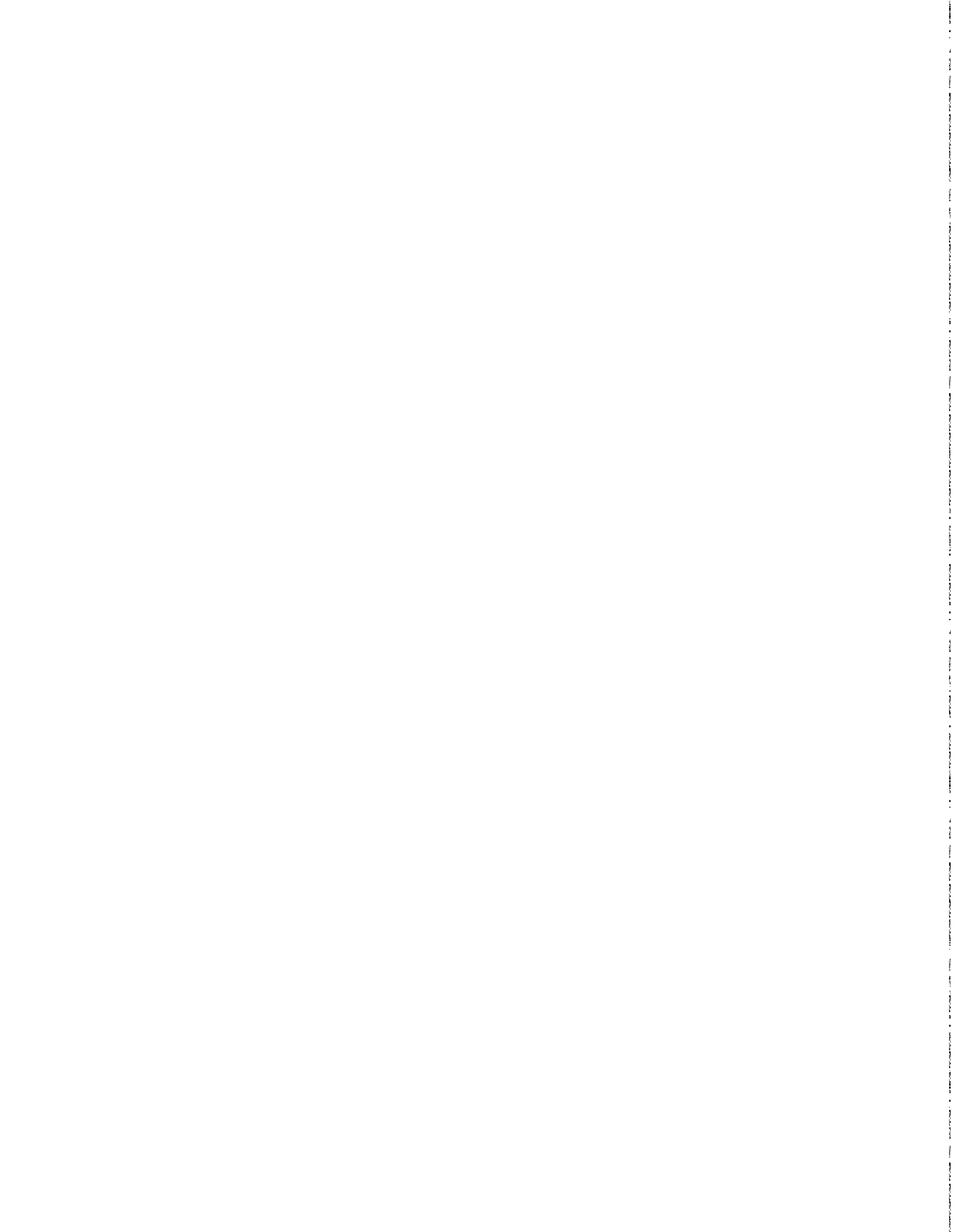
Comptroller General of the United States

**VACANT**

Deputy Comptroller General  
of the United States

**HARRY R. VAN CLEVE**

General Counsel



VOLUME I

No. 2

November 1984

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*Compiled in the  
Index-Digest Section  
Office of the General Counsel  
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*GENERAL GOVERNMENT MATTERS  
APPROPRIATIONS AND MISCELLANEOUS*

*B-215477 Nov. 5, 1984*

*ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC. OF FUNDS, VOUCHERS,  
ETC.--CONTRIBUTORY NEGLIGENCE BY GOVERNMENT*

Where \$2,050 loss of patient funds from overnight depository at VA hospital occurred after employee was careless in handling a \$2,000 deposit, relief granted since employee's negligence was not the proximate cause of the loss. Here, the loss might have been prevented had the hospital installed a new safe it had ordered, moved the location of the safe or issued guidelines on how to handle patient money to its employees.

*VETERAN'S ADMINISTRATION--TRUST FUNDS--HOSPITAL PATIENTS--  
LOSS, THEFT, ETC.*

Patient funds given to a Veteran's Administration (VA) hospital employee will be treated as "public money" for the purposes of 31 U.S.C. 3527(a). The United States has at least an equitable interest in this money because it is entrusted to a public official.

*B-215501 Nov. 5, 1984*

*ACCOUNTABLE OFFICERS--RELIEF--REQUIREMENTS FOR GRANTING--  
RELIEF OF SUPERVISOR*

IRS official accountable for tax receipts embezzled by a subordinate relieved from liability for physical loss where record indicates that official followed agency procedures and provided reasonable supervision.

*B-215734 Nov. 5, 1984*

*ACCOUNTABLE OFFICERS--RELIEF--REQUIREMENTS FOR GRANTING--  
RELIEF OF SUPERVISOR*

Army finance officer granted relief for erroneous payment made by subordinate. Subordinate confirmed existence of an adequate system of procedures and controls.

*B-215737 Nov. 5, 1984*  
*ACCOUNTABLE OFFICERS--RELIEF--REQUIREMENTS FOR GRANTING--*  
*RELIEF OF SUPERVISOR*

Relief granted an Army supervisory disbursing officer where a subordinate admitted that an erroneous payment was the result of not following procedures when the subordinate paid the wrong person for a travel voucher.

*B-215867 Nov. 5, 1984*  
*CERTIFYING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--DUPLICATE*  
*PAYMENTS*

Relief is granted Army Finance and Accounting official under 31 U.S.C. 3528 from liability for certification of improper payment resulting from payee's negotiation of both original and substitute Treasury checks. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payee had actually received both checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute check.

*B-216333 Nov. 5, 1984*  
*DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT RESULT*  
*OF BAD FAITH OR NEGLIGENCE*

Relief is granted Army disbursing official and his supervisor under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his supervisor, and subsequent collection attempts have been pursued.

B-215606 Nov. 14, 1984

*PROPERTY--PUBLIC--SURPLUS--PROCEEDS FROM SALES DISPOSITION--  
REPLACEMENT FACILITIES*

Consistent with 14 C.F.R. 155.7(b), to the extent that the emergency management center to be constructed in San Bernardino County, California, will be used for non-airport purposes, expenditure of proceeds from the sale of the Fontana Airport on its construction would be improper. On the other hand, to the extent that the center will be used in furtherance of the development, improvement, operation or maintenance of a public airport, such expenditures would be proper.

*SURPLUS PROPERTY--SURPLUS PROPERTY ACT--DISPOSITION OF PUBLIC  
AIRPORTS--USE OF PROCEEDS*

Consistent with the provisions of the Surplus Property Act pertaining to disposal of public airports conveyed under the Act, 50 U.S.C. App. 1622, 1622b, 1622c, and the quitclaim deed from the United States, through the Administrator of the War Assets Administration, to San Bernardino County, California, so long as the FAA Administrator consents to the sale of the Fontana Airport and the county obliges itself to use the proceeds of the sale for public airport purposes the sale would be legally proper.

B-214782 Nov. 26, 1984

*ACCOUNTABLE OFFICERS--RELIEF--DUPLICATE CHECKS ISSUED--  
IMPROPER PAYMENT*

Relief granted Army finance officer and subordinate as certifying officers subordinate certified stop payment form to Department Treasury. Treasury subsequently issued a replacement check. Both original and replacement checks were cashed. Relief from erroneous payment for officer and subordinate not necessary under the circumstances.

*B-216883-O.M. Nov. 26, 1984*  
*RECORDS--DESTRUCTION--VETERAN'S ADMINISTRATION--LOAN RECORDS*

This Office has no objection to proposal by Veterans Administration to dispose of plans and specifications relating to direct guaranteed or insured loans 1 year after the expiration of the validity period of a Master Certificate of Reasonable Value and after final action is completed on all related loans, since the expiration of the validity period and completion of action on related loans, the usefulness of the related plans and specification ceases. Furthermore, receipt of subsequent requests for determinations of reasonable value on proposed construction in the same development will require resubmission of plans and specifications.

*B-216884 Nov. 26, 1984*  
*RECORDS--DESTRUCTION--DEPARTMENT OF HEALTH AND HUMAN SERVICES--HEALTH CARE FINANCE ADMINISTRATION*

This Office has no legal objection to Request for Records Disposition Authority submitted by Health Care Finance Administration (HCFA), Department of Health and Human Services, proposing to dispose to System Performance Review files relating to HCFA regional office's annual review conducted in connection with deciding whether to approve Federal Financial Participation in funding a share of the state's cost for developing, installing, and operating its Mechanized Claims Processing Medicaid Management Information System, since periods proposed are adequate to protect the legal interest of the United States.

*B-215170 Nov. 28, 1984*  
*ACCOUNTABLE OFFICERS--RELIEF--DUPLICATE CHECKS ISSUED--IMPROPER PAYMENT*

Based on the supplemental information furnished by the Army, GAO has reconsidered its decision in B-215170, July 18, 1984, and now grants the Army disbursing official relief from liability under 31 U.S.C. 3527(c) for improper payment resulting from payee's negotiation of both original and substitute checks. Disbursing official was bound by

Union agreement to issue substitute checks within 2 days of issuing the original. Therefore, proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith, and subsequent collection attempts have been pursued.

*B-216218 Nov. 30, 1984*

*PUBLIC LANDS--JURISDICTION*

Secretaries of Defense and Interior have authority under the property clause of the Constitution to exercise legislative powers over lands held in exclusive Federal jurisdiction. Regarding lands held in concurrent State-Federal jurisdiction, Federal authorities may regulate user conduct so long as they do not contravene state law in doing so. Accordingly mandatory seat belt use regulation for vehicles using roads on Federal land is authorized.



*Personnel Law: Civilian Personnel*

*November 1984*

*B-211818 Nov. 13, 1984*

*OFFICERS AND EMPLOYEES--OFFICIAL STATION--DETERMINATION*

The location of an employee's official station is a question of fact, and the factors to be considered are: the administrative designation; the place where the employee performs the major part of the duties; and the length and nature of the employee's duties and assignments. Here, the employee performed some duties at the administratively determined official station, but performed a majority of his duties at another station. However, since the nature of his employment was itinerant with assignments to many different temporary duty stations, we hold that the administratively determined official station was, in fact, his official duty station. B-211818, February 14, 1984, sustained.

*B-215024 Nov. 13, 1984*

*TRANSPORTATION--TRAVEL AGENCIES--USE APPROVED*

A private citizen who was issued a travel order by the Department of Education was not given a Government Transportation Request or told of the prohibition against the use of travel agents. Inadvertent use of a travel agent by one who did not know of the restriction formerly contained in Government regulations is not a bar to reimbursement of travel costs which would have been properly charged had requested service been obtained directly from a carrier.

*B-215410 Nov. 14, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--INSPECTION FEES*

Employee of Veterans Administration transferred from Portland, Oregon, to Buffalo, New York, claims real estate expenses of \$2,000 for weatherizing his residence prior to sale as required by lender consistent

with state law. The claim is denied. While the cost of a weatherization inspection required by state law is reimbursable under paragraph 2-6.2f of the Federal Travel Regulations (FTR), expenses claimed for weatherization itself are operating and maintenance costs specifically disallowed by FTR paragraph 2-6.2d.

*B-215960 Nov. 14, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--NONREIMBURSABLE  
EXPENSES--OPERATING AND MAINTENANCE EXPENSES--RESIDENCE*

Employee of Defense Contract Audit agency transferred from South Bend, Indiana, to Chicago, Illinois, claims incidental real estate expenses of \$747.97 for waterpipe repair at his new house prior to settlement. The claim is denied. Expenses claimed for plumbing repairs are operating or maintenance costs specifically disallowed by paragraph 2-6.2d of the Federal Travel Regulations (FTR). Additionally, under FTR para. 2-3.1c, costs disallowed under other sections are not reimbursable as miscellaneous expenses.

*B-216752 Nov. 14, 1984*

*OFFICERS AND EMPLOYEES--PROMOTIONS--TEMPORARY--DETAILED  
EMPLOYEES--HIGHER GRADE DUTIES ASSIGNMENT--WILSON CASE*

An employee's claim for a retroactive promotion and backpay for a detail to a higher grade position is denied on the basis of Turner-Caldwell III, 61 Comp. Gen. 408 (1982). The fact that the employee's agency lost or misplaced his claim for a considerable time does not constitute a basis for consideration of the claim after the holding in Turner-Caldwell III that no further payments would be made to individuals detailed to higher grade positions for more than 120 days.

*B-216477 Nov. 15, 1984*

*TRAVEL EXPENSES--TEMPORARY DUTY--ASSIGNMENT INTERRUPTED--  
RETURN EXPENSES, ETC.--ILLNESS OR DEATH IN FAMILY*

Employee on a temporary duty assignment for training in Georgia may not be reimbursed for the cost



of round trip travel to West Virginia to attend his father's funeral. The travel was for personal reasons and there is no authority under applicable statutes or regulations authorizing reimbursement for personal travel.

*B-215629 Nov. 27, 1984*

*TRANSPORTATION--HOUSEHOLD EFFECTS--WHAT CONSTITUTES--BOAT*

An employee who ships a canoe as part of a household goods shipment made in connection with a transfer of duty station must bear the expense, rather than having the Government pay for it, since boats are expressly excluded by regulations from the definition of "household goods" that may be shipped at Government expense, even though a Government travel officer mistakenly advised that a canoe was not considered a boat under the regulation.

*B-215819 Nov. 28, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
TIME LIMITATION--EXTENSION*

The employee transferred on September 13, 1981, and his maximum time limitation for settlement of a real estate purchase had been extended to September 13, 1983. Since the time limitation had not expired on the effective date of the Federal Travel Regulation amendment increasing the maximum period to 3 years, the employing agency should consider extending the period through the third anniversary (September 13, 1984) of his reporting date at his new duty station. Although employee settled a lot purchase and contracted for residence construction, he must prove his acceptance of finished construction and occupancy, as well as otherwise completing property transfer within the 3-year period. Otherwise, he is not entitled to reimbursement of real estate expenses for either settlement of the lot or building the residence.

B-215154 Nov. 29, 1984

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR  
ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.*

Agency unintentionally gave erroneous advice to employee on which he relied and acted in good faith. However, since Federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply, and estoppel is not available against the Government. Thus, in the absence of specific statutory authority, the United States is not responsible for the erroneous acts of its officers, agents or employees, even though committed in the performance of their official duties. Accordingly, erroneous advice cannot form the basis for payment of the employee's claim.

*OFFICERS AND EMPLOYEES--REDUCTION-IN-FORCE--ENTITLEMENT  
TO TRANSFER EXPENSES*

Employee voluntarily resigned after being notified that he was to be separated in a reduction-in-force (RIF). Approximately 15 months later he was reemployed by a different agency in a different location. Since he did not meet statutory requirement of 5 U.S.C. 5724a(c) (1982) that he be reemployed within 1 year of separation in order to be eligible for reimbursement of relocation expenses because he was reemployed by the Government following a RIF, he may not be reimbursed. Neither agency regulation nor agency official can waive or modify statutorily imposed 1-year limit.

B-216885 Nov. 29, 1984

*COMPENSATION--WAIVERS--PROHIBITION*

Chairman of the Committee on Post Office and Civil Service, House of Representatives, requests our views on the legality of the Secretary of Labor, Mr. Raymond Donovan's leave without pay status. Although Mr. Donovan states he is not performing

the duties of his office and will not receive pay, court decisions and those of the Comptroller General hold that an officer is entitled to his salary and may not voluntarily waive the salary so as to estop him from later claiming it. If, however, Mr. Donovan wishes to waive receipt of the checks he may do so.



*Personnel Law: Military Personnel*

*November 1984*

*B-216466 Nov. 14, 1984*

*AGENTS--GOVERNMENT--GOVERNMENT LIABILITY FOR NEGLIGENT  
OR ERRONEOUS ACTS--MILITARY MATTERS--ERRONEOUS INFORMATION  
REGARDING PAY*

Assurances by superior officers to an Army reservist that if funds became available he would be paid for duty, when orders are to the contrary, are not a basis for allowing a claim for pay since, absent specific authority, the United States is not liable for the erroneous advice given by its officers, agents, or employees even though given in the performance of their official duties.

*ORDERS--CANCELLED, REVOKED, OR MODIFIED--SUBSEQUENT ORDERS--  
EFFECTIVE DATE*

Orders of an Army reservist who agreed to perform inactive duty training and active duty without pay, may not be amended to retroactively place the member in a pay status if the intent was clearly that his orders were for duty in a nonpay status. The general rule is that only when orders are incomplete or ambiguous or when a provision is omitted through error or inadvertence, may they be amended retroactively to increase the liability of the Government.

*B-215390 Nov. 20, 1984*

*TRANSPORTATION--DEPENDENTS--MILITARY PERSONNEL--DISLOCATION  
ALLOWANCE--MOVES WITHIN SAME CITY, ETC.*

A Navy member was ordered to transfer from a vessel, whose home port was Mayport, to the Naval Air Station, Jacksonville, Florida. Transportation of dependents was not authorized and Government quarters were not provided at the new duty station. Both Mayport and the Naval Air Station are located within the corporate

limits of Jacksonville, and under agency regulations where the transfer is between stations within the same city, no change of permanent station occurs. In the absence of a change of permanent station, regulations prohibit payment of a dislocation allowance, either on a with-dependent or without-dependent theory, even though the dependents were required to vacate Government quarters.

*B-215096 Nov. 21, 1984*

*MILITARY PERSONNEL--DISLOCATION ALLOWANCE--ENTITLEMENT*

A Marine Corps officer moved his dependents and relocated his household to non-Government quarters in the vicinity of the Marine Corps Base, Camp Pendleton, California, in connection with his permanent change of station assignment to Okinawa, Japan, because he was not authorized to have his dependents accompany him. He received a dislocation allowance at the with-dependents rate incident to that relocation of his dependents. When he completed this assignment he was assigned on a permanent change of station to Camp Pendleton, and he joined his dependents in the residence they occupied when he transferred to Okinawa. In connection with his transfer from Okinawa to Camp Pendleton, where he was not assigned to Government quarters, he is entitled to a dislocation allowance as a member without dependents.

*PROCUREMENT LAW*

*B-213459.2 Nov. 2, 1984 84-2 CPD 486  
BIDS--INVITATION FOR BIDS--AMBIGUITY ALLEGATION--NOT  
SUSTAINED--ONLY ONE REASONABLE INTERPRETATION*

Initial GAO decision finding an IFB amendment not material based on the "most reasonable" reading of the IFB is affirmed where the agency argues there are other reasonable interpretations of the IFB which would render the amendment material, but those interpretations are not as reasonable as the one on which GAO's decision was based; where one interpretation of an IFB stands out from all others as most reasonable, it essentially constitutes the only reasonable interpretation for purposes of GAO review.

*B-214161 Nov. 2, 1984 84-2 CPD 487  
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
LIFE-CYCLE COSTING*

Where protester disagrees with procuring activity as to the applicable tariff rates used to calculate life-cycle cost of proposals, but protester has furnished no direct, independent evidence that the cost calculation or tariff information is incorrect, and the procuring activity has provided basis for its calculation, the protester has failed to meet its burden of affirmatively proving its case.

*B-214209 Nov. 2, 1984 84-2 CPD 488  
CONTRACTS--AWARDS--SEPARABLE OR AGGREGATE--SINGLE AWARD--  
PROPRIETY*

Protest concerning agency decision to obtain building operation, maintenance and tenant services from single contractor is denied since agency decision to procure these services from a single source comports with standard commercial practice and is otherwise reasonable.

B-214209 Nov. 2, 1984 84-2 CPD 488 - Con.  
CONTRACTS--NEGOTIATIONS--OFFERS OR PROPOSALS--EVALUATION--  
REASONABLE

Evaluation subfactor limited to offeror's reputation or experience within a particular metropolitan area constitutes an unreasonable restriction upon competition where the actual needs of the agency, to insure that the offeror's local office is not markedly lower in quality than the offeror's other offices, can be satisfied through other means, i.e., evaluation of the qualifications and experience of the personnel to be assigned to the contract.

B-215694 Nov. 2, 1984 84-2 CPD 489  
PURCHASES--SMALL--QUOTATIONS--REJECTION--TECHNICAL EQUALITY

Where protester does not contend that rejection of quotation on small purchase procurement was made in other than good faith, determination to reject quotation after technical evaluation is upheld where protester's literature failed to show equality of item to the brand name specified.

B-215985 Nov. 2, 1984 84-2 CPD 490  
BIDS--INVITATION FOR BIDS--INTERPRETATION--ORAL  
EXPLANATION

Bidders who rely upon oral advice from agency personnel after being expressly cautioned by the solicitation not to do so proceed at their own peril. It is unreasonable for a bidder to rely upon such advice when it conflicts with the express language of the solicitation.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Where conflicting statements of the protester and agency personnel are the only evidence regarding alleged advice given the protester, the protester has not met its burden of affirmatively proving that such advice was in fact given.



*B-212703.3 Nov. 5, 1984 84-2 CPD 495*  
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT*  
*ESTABLISHED*

Where protester merely reiterates the arguments made in its original protest and disagrees with prior decision, GAO will not not further consider the matter.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR*  
*APPLICATION*

Since whether a particular protester should have been eligible for labor surplus area status turns on the facts and circumstances of the particular case, it is not a matter of widespread interest to the procurement community and does not affect a broad class of procurements. Therefore, it is not a significant issue under the GAO Bid Protest Procedures so as to warrant consideration despite its untimely filing.

*B-215970 Nov. 5, 1984 84-2 CPD 496*  
*CONTRACTS--PROTESTS--ISSUES IN LITIGATION*

GAO will not consider a protest where the material issues are before a court of competent jurisdiction which has not expressed an interest in receiving GAO's decision.

*B-215978 Nov. 5, 1984 84-2 CPD 497*  
*CONTRACTS--NEGOTIATION--AWARDS--PROPRIETY--UPHELD*

The otherwise successful offeror whose late modification shall be considered when it is advantageous to the government is the offeror selected for award.

*B-215978 Nov. 5, 1984 84-2 CPD 497 - Con.  
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--  
FAILURE TO REQUEST--INACCEPTABLE REVISED PROPOSAL*

Agency properly did not request a best and final offer from an offeror whose proposal was excluded from the competitive range.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Agency may exclude revised proposal from the competitive range where the agency reasonably determines that because of the proposal's high price it has no reasonable chance of being selected for award.

*B-216107 Nov. 5, 1984 84-2 CPD 498  
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION*

Agency decision to award a sole-source contract to National Academy of Sciences (NAS) is justified where record shows that reasonable basis exists for agency determination that only NAS could meet agency's needs.

*B-216596.2 Nov. 5, 1984 84-2 CPD 499  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that a solicitation allowed insufficient time for the preparation of proposals is untimely when not raised prior to the closing date for receipt of proposals.

*B-216829 Nov. 5, 1984 84-2 CPD 500  
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO  
ACKNOWLEDGE--BID NONRESPONSIVE*

Failure to acknowledge a material amendment which contained a Service Contract Act wage rate determination generally renders a bid nonresponsive.

*B-216887 Nov. 5, 1984*  
*FEDERAL ACQUISITION REGULATION--PROPOSED REVISION--BIDDERS--*  
*DEBARMENT, SUSPENSION, ETC.*

GAO has no objection to proposed change in Department of Defense Federal Acquisition Regulation Supplement, subpart 9.4, entitled "Debarment, Suspension and Ineligibility." This change provides that contractors will generally be debarred for more than 1 year when the debarment is based on a felony criminal conviction and any decision by a debarring official not to debar or to debar for less than 1 year must be approved by the Secretary concerned or, in the case of defense agencies, the Under Secretary of Defense for Research and Engineering.

*B-216926 Nov. 5, 1984 84-2 CPD 501*  
*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--*  
*NONAPPROPRIATED FUND ACTIVITIES*

GAO will not review the award of a contract which does not involve the direct expenditure of appropriated funds.

*B-216928 Nov. 5, 1984 84-2 CPD 502*  
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO*  
*PROTESTER*

Protest against award of contract is untimely when filed more than 10 working days (plus reasonable delivery time) after agency sent notice to protester of award to another firm.

*B-210801.2 Nov. 6, 1984 84-2 CPD 503*  
*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--*  
*STATUTORY CHANGE*

Despite lengthy procurement delays, agency acted properly in amending RFP procuring specialty metal item to recognize exception to DOD restriction against use of foreign specialty metals where end products of qualifying countries are offered. Law had been amended to recognize this exception after RFP issuance, but RFP

did not recognize this exception until RFP did not recognize this exception until RFP amendment was issued.

*CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE*

Although failure to promptly notify offeror of awards on other line items under RFP, where offeror was in line for award on another line item, violated Defense Acquisition Regulation 3-508, such procedural deficiency does not provide basis for disturbing otherwise valid award since alleged prejudice is speculative.

*B-215348 Nov. 6, 1984 84-2 CPD 504*

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION  
CRITERIA--COST*

RFP "Cost" evaluation factor, worth 15 of 100 points, does not involve an evaluation of actual cost quantum where it is expressly defined to include only cost realism and comparison with the government estimate, and the RFP has a "Best Buy" provision stating that the selection decision will depend on whether differences in proposal merit are worth any added cost. The "Best Buy" provision essentially establishes that cost quantum is as important in the selection as the numerical ratings of proposals.

*CONTRACTS--NEGOTIATION--SOURCE SELECTION--BOARD, COMMISSION,  
ETC.--OVERRULED BY SOURCE SELECTION OFFICIAL*

A source selection official's judgment as to the merits of competing proposals is not unreasonable only because it differs from the evaluation panel's, since selection officials are not bound by evaluators' numerical scoring or recommendations, although their use of the results of technical and cost evaluations must be reasonable and consistent with the stated evaluation factors.

*B-215730 Nov. 6, 1984 84-2 CPD 505*

*BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED*

Failure to synopsise procurement in Commerce Business Daily does not constitute compelling reason to

cancel invitation for bids and resolicit since competition was adequate and reasonable prices were obtained and there is no evidence that contracting officer intended to exclude protester from bidding.

*B-216438.2 Nov. 6, 1984 84-2 CPD 506  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT  
ESTABLISHED*

Request for reconsideration that basically only reiterates previously-rejected arguments does not warrant reversal or modification of the prior decision.

*B-216539 Nov. 6, 1984 84-2 CPD 507  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 working days after an oral agency-level protest is untimely. Moreover, the fact that the firm continued to pursue the matter with the contracting agency by filing a written protest does not toll the time to protest to GAO.

*B-216672, B-216673 Nov. 6, 1984 84-2 CPD 508  
CONTRACTS--PROTESTS--COURT ACTION--PROTEST DISMISSED*

Protest is dismissed where material issues are before court of competent jurisdiction, judicial relief pending decision by this Office has not been requested, and the court has not expressed interest in receiving GAO's views.

*B-216813 Nov. 6, 1984 84-2 CPD 509  
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL v.  
SPECIFIC--EFFECT ON RESPONSIBILITY*

Solicitation provision requiring bidders to obtain necessary licenses and/or permits to perform contract is a general licensing requirement and is a matter to be resolved between the bidder and state or local

authorities and is not a matter that the contracting officer must consider in making the award.

*BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

Submission of allegedly below-cost bid does not provide a basis for challenging the award of a contract.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED*

A contract award to a bidder necessarily includes the contracting officer's finding that the bidder is responsible. GAO does not review affirmative determinations of responsibility unless there has been a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria were not applied.

*B-215349 Nov. 8, 1984 84-2 CPD 511*

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
CRITERIA--ADMINISTRATIVE DETERMINATION*

Although cost of government-furnished material generally should be considered in evaluating prices, when contracting agency is primarily concerned with obtaining best possible product (batteries), not necessarily the one using the least amount of government-furnished material (silver), and when material will be reclaimed almost in its entirety, decision neither to limit amount nor to evaluate its cost is reasonable.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--  
SOLICITATION IMPROPRIETIES*

When an agency amends a solicitation in response to a protest to it concerning government-furnished material, but the amendment is allegedly ambiguous and subjective, the protester has a new basis for protest to the agency. Deletion of the provision in its entirety by another

amendment leaves the protester in the same position as it was before the initial protest, and a protest to GAO filed within 10 days after issuance of the later amendment is timely.

When an agency amends a solicitation without responding to a protest to it requesting inclusion of a provision permitting waiver of first article testing, issuance of the amendment is adverse to the protester's interest, and any subsequent protest to GAO must be filed within 10 days.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR  
APPLICATION*

Exception permitting consideration of untimely protests is used sparingly, and generally only when GAO is considering a case of first impression. A protest involving an allegedly improper refusal to waive first article testing does not fall within this exception, since GAO has already held that waiver is a matter of agency discretion, which is not abused by refusal to waive when testing is more stringent than in the past.

*B-215575 Nov. 8, 1984 84-2 CPD 512  
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS  
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Agency's specifications for an analog system for telemetry equipment are not unduly restrictive of competition where the agency presents a reasonable explanation why the restrictions are necessary to meet its minimum needs, and the protester fails to address the explanation or show that the restrictions are unreasonable.

*B-216509 Nov. 8, 1984 84-2 CPD 513  
BIDS--EVALUATION--LIFE-CYCLE COST*

GAC finds no merit in protest that the General Services Administration's (GSA) method for evaluating life cycle costs (LCC), in conjunction

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establishes that agency had reasonable basis for concluding that protester had no realistic chance of receiving award.

*B-214700, B-214878 Nov. 13, 1984 84-2 CPD 520  
BIDS--MULTIPLE--CERTIFICATE OF INDEPENDENT PRICE DETERMINATION*

Certificates of Independent Price Determination submitted by affiliated, multiple bidders should be regarded as indicating that the prices submitted by them were not discussed or communicated to any other competitor of the multiple bidders or to any prospective bidder other than themselves and that no attempt has been made to induce any other person to submit or not to submit an offer for the purposes of restricting competition.

*BIDS--MULTIPLE--PROPRIETY*

Multiple bids from more than one commonly owned and/or controlled company may be accepted unless such multiple bidding is prejudicial to the interests of the government or other bidders.

*BIDS--PRICES--REASONABLENESS--ADMINISTRATIVE DETERMINATION*

A determination concerning price reasonableness is a matter of administrative discretion that necessarily involves the exercise of business judgment by the contracting officer. We will not question that judgment unless it is clearly unreasonable or there is a showing of bad faith or fraud.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED*

We review affirmative responsibility determinations only when there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have not been met.

*B-214700, B-214878 Nov. 13, 1984 84-2 CPD 520 - Com  
CONTRACTS--AWARDS--ABEYANCE--PENDING AGENCY DECISION ON  
PROTEST*

We are not aware of any requirement that the procuring agency withhold award pending the protester's receipt of the agency's decision on its protest.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--  
CHALLENGED BIDDER NOT IN LINE FOR AWARD*

Protester challenges another bidder's representation of eligibility as a labor surplus area concern. Since the challenged bidder is not currently in line for award of the labor surplus area portion of the solicitation, our consideration of this issue would serve no useful purpose.

*B-215266 Nov. 13, 1984 84-2 CPD 521  
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
TECHNICAL ACCEPTABILITY--BASED ON CONTENT OF PROPOSAL*

Navy had reasonable basis to reject protester's initial proposal as technically unacceptable where proposal contained informational omissions and lacked supporting data required by the solicitation and considered significant to the achievement of technical requirements. Proposal defects could not have been cured without a complete revision.

A technical evaluation must be based on information submitted with the proposal. No matter how capable an offeror may be, if it does not submit an adequately written proposal, it will not be considered in the competitive range or in line for discussions in a negotiated procurement.

*B-216639 Nov. 13, 1984 84-2 CPD 523  
BIDDERS--RESPONSIBILITY v. BID RESPONSIVENESS--PLACE OF  
PERFORMANCE*

Invitation requirement that the bidder designate the place of performance if it is other than the bidder's address as stated in the bid generally relates to

bidder responsibility, not bid responsiveness, so that the designation may be made after bid opening.

*BIDS--COMPETITIVE SYSTEM--EQUAL BIDDING BASIS FOR ALL BIDDERS--  
DELIVERY REQUIREMENTS*

Bidder's failure to specify f.o.b. origin point does not render the bid nonresponsive where the invitation excludes transportation costs from price evaluation, since the omission had no effect on the competitive standing of the bidders.

*CONTRACTS--PROTESTS--SUMMARY DISMISSAL*

Protests presenting the same issue that was resolved adversely to the protester in a recent protest under a different procurement is summarily denied since it is clear on its face that it has no legal merit.

*B-216791 Nov. 13, 1984 84-2 CPD 524*

*BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--  
DESCRIPTIVE LITERATURE*

Failure to furnish complete descriptive literature required by the solicitation by bid opening for the evaluation of the bid renders the bid nonresponsive.

*B-216956 Nov. 13, 1984 84-2 CPD 525*

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
COMPETITIVE RANGE DETERMINATION--REASONABLENESS*

Protest against agency's decision not to include an offer in the competitive range is denied summarily where documents submitted with protest show that protester failed to submit an adequate technical proposal and that the agency did not act arbitrarily in rejecting the proposal on that basis.

*B-216963 Nov. 13, 1984 84-2 CPD 526*

*BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--  
BID NONRESPONSIVE*

Failure to acknowledge a material amendment which contained a change in specifications in a solicitation renders a bid nonresponsive.

*B-210941.5 Nov. 14, 1984 84-2 CPD 527*

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH  
ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION--  
REVISION OF PROPOSAL OPPORTUNITY*

Requirement for discussions is satisfied where the protester was made aware of the agency's underlying concern in connection with a prior protest in the same procurement and protester was subsequently accorded an opportunity to revise its proposal to correct the deficiency.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--  
PROPOSED TECHNICAL APPROACH INSUFFICIENTLY PROVEN*

Agency acted reasonably by refusing to award a parallel development contract to a firm whose proposed design could involve schedule risk that would preclude development and testing on a parallel path and where the design problem with the proposal precluded its evaluation as superior to either of the offers that was selected.

*B-215288 Nov. 14, 1984 84-2 CPD 529*

*BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT*

A bid under a brand name or equal solicitation which fails to indicate conformance with salient characteristics is properly rejected as nonresponsive and cannot be cured by information furnished after bid opening.

*B-215415 Nov. 14, 1984 84-2 CPD 530*

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
NONRESPONSIBILITY FINDING*

A contracting officer has broad discretion in determining a prospective contractor's responsibility, and this Office will not question a nonresponsibility determination unless the protester demonstrates bad faith by the agency or a lack of any reasonable basis for the determination.

*B-215539 Nov. 14, 1984 84-2 CPD 531*  
*CONTRACTS--NEGOTIATION--CONFLICT OF INTEREST PROHIBITIONS--*  
*ORGANIZATIONAL--AGENCY RESPONSIBILITIES*

Protest that contracting agency improperly determined protester to be ineligible for award because protester had a conflict of interest is denied. Contracting agency reasonably determined, in accord with Federal Acquisition Regulation 9.502-2(b), that, since protester had previously been awarded contract on a noncompetitive basis to prepare statement of work for present protested procurement, protester had conflict of interest and should be precluded from competing for contract to perform work required under same statement of work.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--CONTRACTORS*  
*WITH ORGANIZATIONAL CONFLICTS OF INTEREST*

Firm that is ineligible to compete for award of contract due to conflict of interest is not an interested party to protest propriety of award of that contract to another firm.

*B-215588.2 Nov. 14, 1984 84-2 CPD 532*  
*BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY*  
*UNBALANCED BIDS"--MATERIALITY OF UNBALANCE*

A bid in which prices for base year and 2 option years are not significantly different and will result in the lowest ultimate cost to the government is not materially unbalanced.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR*  
*RESOLUTION BY GAO*

Questions regarding performance bond and other requirements which are implemented after award are matters of contract administration not cognizable under our bid protest procedures.

B-215859, B-215859.2 Nov. 14, 1984 84-2 CPD 533  
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--  
BID NONRESPONSIVE

A bidder's failure to acknowledge a material amendment may not be waived on the basis that the bidder did not receive the amendment where there is no evidence of a deliberate effort by the agency to prevent the bidder from competing on the procurement.

BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--  
MATERIALITY DETERMINATION

A solicitation amendment is material where the requirements added by the amendment will affect the quality of performance in more than a negligible way.

B-216049 Nov. 14, 1984 84-2 CPD 534  
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS  
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protest that the requirement for nonworking supervisors for service attendants is unduly restrictive is denied where the contracting agency has established prima facie support for the requirement and the protester has failed to show that the requirement is clearly unreasonable.

BONDS--BID--ADMINISTRATIVE DETERMINATION

Protest that IFB requirement for performance and payment bonds is unduly restrictive is without merit since the solicitation evidences that in the performance of food service attendant work the awardee would be required to make extensive use of government equipment--one of the examples for bonding requirements enumerated in the Federal Acquisition Regulation. Moreover, the agency's requirement for continuous operations in its food service facilities is itself a reasonable basis for the bonding requirement.

B-216049 Nov. 14, 1984 84-2 CPD 534 - Con.  
BONDS--REQUIREMENT--BID, PERFORMANCE, ETC.--ADMINISTRATIVE  
DETERMINATION

Contention that requirement for performance bond was being used as a predetermination of responsibility is denied where requirement was documented as being for purpose of protecting government's property.

B-214997 Nov. 15, 1984 84-2 CPD 535  
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--  
SMALL BUSINESS REPRESENTATION

A bid received on a total small business set-aside solicitation that failed to indicate that the bidder is either a manufacturer or regular dealer and does not commit the bidder to furnish supplies manufactured by a small business is nonresponsive and may not be accepted. Bidder's failure to assume obligation to provide product manufactured by a small business is not overcome by completion of the production and shipping point clause, because that clause establishes only a present intent to manufacture the product.

B-215894 Nov. 15, 1984 84-2 CPD 536  
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--  
"FAIR PROPORTION" POLICY

"Fair proportion" requirement in the Small Business Act is applicable to the totality of government procurement and does not require that only a portion of procurements for a particular item or class of items be set aside for small business.

B-215143 Nov. 15, 1984 84-2 CPD 537  
CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--  
WAGE AND FRINGE BENEFITS OF INCUMBENT CONTRACTOR'S EMPLOYEES--  
UNION AGREEMENT EFFECT

An incumbent contractor is not placed at a competitive disadvantage when an agency incorporates, by amendment, a current collective bargaining agree-



ment into a solicitation subject to the Service Contract Act, in lieu of a revised wage determination from the Department of Labor not timely received prior to bid opening. Bidders hoping to succeed the incumbent are bound by law to pay their employees the same wages and benefits as are set forth in the collective bargaining agreement, and must therefore compute their costs of performance on the same basis as the incumbent.

*B-216916 Nov. 15, 1984 84-2 CPD 538*  
*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--*  
*FAILURE TO MEET SOLICITATION REQUIREMENTS*

Protest against rejection of proposal in response to RFP as unacceptable for failing to submit technical proposal is summarily denied where RFP adequately informed offerors that technical proposal was required.

*B-214081.2 Nov. 19, 1984 84-2 CPD 539*  
*CONTRACTS--NEGOTIATION--AWARDS--PROPRIETY*

Award to offeror who did not propose to place a "computer on site" as specifically required by the RFP was improper, since the basis for an award must be the same, in its material terms, as that on which the competition is conducted.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMBIGUOUS*

Where a solicitation contained an ambiguity that caused offerors to compete on an unequal basis, and it is uncertain which offeror, absent the ambiguity, would have been low, award under the solicitation was improper.

*B-215933 Nov. 19, 1984 84-2 CPD 540*  
*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION*  
*WITH ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS*

Meaningful discussions have been held where the agency, through written or oral communications, has identified certain areas of deficiency in an

offeror's proposal, and has afforded the offeror an opportunity to correct those deficiencies in a revised proposal. A mere request for best and final offers is sufficient to satisfy the requirement for discussions.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
ADMINISTRATIVE DISCRETION*

In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting activity's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
PRICE CONSIDERATION*

In a negotiated procurement, award need not be made to the low offeror unless the solicitation so indicates.

*CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

A showing of bad faith requires irrefutable proof that contracting officials acted with the specific and malicious intent to injure the protester.

*B-216440.2 Nov. 19, 1984 84-2 CPD 541  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT  
ESTABLISHED*

Request for reconsideration is denied where no new facts or legal arguments are raised which show that prior decision was erroneous.

B-216254 Nov. 20, 1984 84-2 CPD 544  
BIDS--LATE--TELEGRAPHIC MODIFICATIONS--DELAY DUE TO  
WESTERN UNION

A bid modification received more than 1 hour after  
bid opening because it was misrouted by Western Union  
was properly rejected as late.

B-215453 Nov. 21, 1984 84-2 CPD 545  
BIDS--AGGREGATE v. SEPARABLE ITEMS, PRICES, ETC.--FUNDS  
AVAILABILITY

When standard "Additive and Deductive Items" clause  
is applicable to some items of an IFB, awardee may  
not be selected on basis of low aggregate price for all  
items when insufficient funds were available at bid  
opening to cover all items subject to the clause.

BIDS--UNBALANCED--TO MEET COST LIMITATIONS

Allegation of unbalanced bid caused by transferring  
costs from item subject to cost limitation to ano-  
ther item is unproven when bidder's bid price for the  
first item is proximate to government cost estimate.

B-215915.2 Nov. 21, 1984 84-2 CPD 546  
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR  
RESOLUTION BY GAO

Protest that awardee might provide a noncon-  
forming item raises a matter of contract administra-  
tion which is the responsibility of the procuring agency,  
not GAO.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT  
ESTABLISHED

Prior decision is affirmed on reconsideration where  
protester has not shown any error of law or fact  
which would warrant reversal of the decision.

*B-215623 Nov. 23, 1984 84-2 CPD 547  
BIDS--INVITATION FOR BIDS--AMENDMENTS--LATE RECEIPT--BIDDER'S  
RISK*

Fact that bidder did not receive amendment of solicitation in time to acknowledge it timely is irrelevant unless the late receipt of the amendment resulted from a conscious or deliberate attempt by contracting officials to exclude the bidder from competing.

*BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--  
SMALL BUSINESS REQUIREMENTS*

A bid on a total small business set-aside indicating that bidder as a regular dealer, would not supply items manufactured by a small business concern was properly determined nonresponsive due to failure to submit binding promise to meet set-aside requirement, even though a small business was listed in the "Place of Performance" clause and elsewhere in the bid.

*BIDS--RESPONSIVENESS--OFFER OF COMPLIANCE AFTER BID OPENING--  
ACCEPTANCE NOT AUTHORIZED*

A nonresponsive bid may not be "clarified" after bid opening to make it responsive since to permit this would be tantamount to permitting the submission of a new bid.

*B-215807 Nov. 23, 1984 84-2 CPD 548  
BIDS--LATE--TELEGRAPHIC MODIFICATION--DELIVERED SUBSEQUENT TO  
BID OPENING--TELEPHONE NOTIFICATION RECEIVED PRIOR TO BID  
OPENING*

Bid modification was untimely where telegram was received after bid opening, notwithstanding contracting agency had received call from telegraph company prior to bid opening advising of modification.

B-215807 Nov. 23, 1984 84-2 CPD 548 - Con.  
BIDS--REJECTION--NOTICE

Delays of contracting agency in advising of non-responsiveness of bid and in responding to protest are deficiencies which do not affect the validity of the rejection of the bid.

B-215837 Nov. 23, 1984 84-2 CPD 549  
CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS--  
EVALUATION--EXPERIENCE REQUIREMENT

Contracting officer acted reasonably in determining that offer met experience requirement contained in solicitation where requirement was for similar but not identical experience and offeror's proposal contained evidence of experience in excess of that required, which the contracting officer considered to be sufficiently similar to warrant consideration.

B-214639.2 Nov. 26, 1984 84-2 CPD 550  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER

Protest based upon the alleged disclosure of the protester's cost proposal in the agency report to GAO is untimely where not filed within 10 working days after the protester received the report.

B-215682 Nov. 26, 1984 84-2 CPD 551  
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY  
DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF  
COMPETENCY REQUIREMENT

GAO will not review a contracting officer's finding that a small business concern is nonresponsible since the Small Business Administration, to which the matter has been referred, has conclusive authority to determine the responsibility of small business concerns under its certificate of competency procedures.

B-215877 Nov. 26, 1984 84-2 CPD 552  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest against solicitation provisions filed with GAO before the closing date for receipt of proposals, but 3 weeks after issuance of an amendment which did not fully satisfy the protest to the contracting agency, is untimely.

B-216134.2 Nov. 26, 1984 84-2 CPD 553  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
RECONSIDERATION REQUESTS--TIMELINESS

GAO will dismiss request for reconsideration of prior decision as untimely where it is not filed until 2 months after decision was issued.

B-216196 Nov. 26, 1984 84-2 CPD 554  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER

Protest that sole-source award of contract was improper is untimely where filed approximately 1 month after date of publication in Commerce Business Daily (CBD) of notice that sole-source negotiations were being conducted, since protester is charged with constructive notice of CBD announcement and protest was not filed within 10 working days after basis of protest was known or should have been known.

B-216448 Nov. 26, 1984 84-2 CPD 555  
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT  
INTEREST CRITERION

Council members of Kickapoo Indian Tribe are not "interested parties" under GAO's Bid Protest Procedures since Kickapoo Tribe did not submit a bid on the questioned procurement and private parties, who do not represent an entity which participated in the procurement, lack the requisite direct economic interest in the contract awards in question.

B-216535 Nov. 26, 1984 84-2 CPD 556  
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY  
DETERMINATION--NONRESPONSIBILITY FINDING--REFERRAL TO SBA FOR  
COC MANDATORY WITHOUT EXCEPTION

GAO will not review rejection of small business bidder as being nonresponsible where the bidder fails to file an application for a certificate of competency with the Small Business Administration.

B-216545 Nov. 26, 1984 84-2 CPD 557  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

A solicitation provision stating that information concerning a bidder's proposed staff could be submitted after bid opening relates to a bidder's responsibility not to the responsiveness of the bid.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED

Protest challenging awardee's submission of information regarding its proposed staff and its ability to provide an adequate staff will not be considered since GAO does not review affirmative determinations of responsibility absent showing of possible fraud or bad faith or allegation that definitive responsibility criteria have not been applied.

B-216644 Nov. 26, 1984 84-2 CPD 558  
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

Protest is dismissed: (1) where protester, after protesting to GAO, files suit seeking preliminary injunction pending GAO decision, and (2) where court has denied a temporary restraining order without prejudice to request for preliminary injunction, since suit is still pending before court and court has not expressed any interest in receiving a GAO decision.

B-216746.2 Nov. 26, 1984 84-2 CPD 559  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Bidder had reasonable opportunity to file  
protest before bid opening where bidder received  
solicitation 1 day before bid opening and was able  
to prepare and submit its bid before bid opening.

Protest of allegedly restrictive specification  
is untimely where initial protest with contracting  
agency was filed after bid opening.

B-216896 Nov. 26, 1984 84-2 CPD 560  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against solicitation specifications  
received by GAO after the time set for bid  
opening is not timely.

B-216933 Nov. 26, 1984 84-2 CPD 561  
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS  
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--  
CONCLUSIVENESS

GAO will not question the Small Business Admini-  
stration's (SBA) refusal to issue a certificate  
of competency where the protester failed to make  
a timely response to the SBA's requests for infor-  
mation.

B-216936 Nov. 26, 1984 84-2 CPD 562  
BIDS--PRICES--BELOW COST--EFFECT ON BIDDER RESPONSIBILITY

No basis exists to preclude a contract award  
merely because the low bid is below cost. Such  
bid presents a question of the bidder's  
responsibility, a matter which the GAO does not  
review except in limited circumstances.



B-216947 Nov. 26, 1984 84-2 CPD 563  
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL  
BUSINESS SET-ASIDES

Large business protester is not an interested party to protest allegedly restrictive specifications in a small business set-aside solicitation where the protester would not be affected by the resolution of the issue which it raises.

B-216988 Nov. 26, 1984 84-2 CPD 564  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Allegation that RFP is restrictive of competition is dismissed as untimely when not filed before the closing date for receipt of proposals.

B-216992 Nov. 26, 1984 84-2 CPD 565  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest concerning alleged improprieties on the face of a solicitation is untimely and will not be considered where not filed with the contracting agency or GAO prior to bid opening.

B-217013 Nov. 26, 1984 84-2 CPD 566  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER

Protest concerning rejection of quotation, filed with GAO more than 10 working days after protester was notified that the products it proposed to deliver were unacceptable, is untimely and not for consideration on the merits.

B-217014 Nov. 26, 1984 84-2 CPD 567  
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS  
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY

Under 15 U.S.C. 637(b)(7), Small Business Administration's authority to issue or deny a certificate of competency and GAO will not review an SBA determination absent prima facie showing of fraud or willful disregard of facts.

B-217023 Nov. 26, 1984 84-2 CPD 568  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER

Protest filed with GAO more than 10 working days after protester learns of basis for protest is untimely.

B-217029 Nov. 26, 1984 84-2 CPD 569  
CONTRACTS--OPTIONS--NOT TO BE EXERCISED--CONTRACT  
ADMINISTRATION MATTER--NOT FOR GAO RESOLUTION

Where an option is exercisable at the sole discretion of the government, the decision not to exercise the option is a matter of contract administration which GAO will not review under its bid protest function.

B-217033 Nov. 26, 1984 84-2 CPD 570  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest of specification amendment either filed with agency prior to next closing date for receipt of proposals and not filed with GAO within 10 working days of initial adverse agency action, or filed with GAO after next closing date for receipt of proposals, is untimely.

B-217041 Nov. 26, 1984 84-2 CPD 571  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determination of  
responsibility except in limited circumstances.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR  
RESOLUTION BY GAO

Matters of contract administration are not within the  
purview of GAO's Bid Protest Procedures.

B-217043 Nov. 26, 1984 84-2 CPD 572  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED

A protest that no other firm is able to comply with  
a solicitation's delivery requirements or provide  
a source controlled component is a protest against  
the proposed awardee's responsibility. GAO will not  
review affirmative responsibility determinations un-  
less there has been a showing of possible fraud or bad  
faith on the part of procuring officials or that defini-  
tive responsibility criteria have not been properly  
applied.

B-217046 Nov. 26, 1984 84-2 CPD 573  
SMALL BUSINESS ADMINISTRATION--AUTHORITY--SMALL BUSINESS  
CONCERNS--SET-ASIDE DETERMINATIONS

The determination to set aside a procurement under  
section 8(a) of the Small Business Act, as well as  
the propriety of the 8(a) award itself, is a  
matter for the contracting agency and the Small  
Business Administration and, therefore, will not be  
reviewed by GAO absent a showing of possible fraud  
or bad faith on the part of government officials or a  
failure by agency officials to follow applicable reg-  
ulations.

B-217048 Nov. 26, 1984 84-2 CPD 574  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED

Except in limited circumstances not applicable here, GAO will not review allegations that bid is below-cost bid and that awardee therefore will not meet minimum wage and fringe benefit requirements, since these involve a challenge to an affirmative determination of responsibility.

LABOR DEPARTMENT--JURISDICTION--SERVICE CONTRACT ACT  
VIOLATIONS

Whether a successful bidder will perform in accord with the Service Contract Act is a matter for the Secretary of Labor, and GAO will not review a protest on this basis.

B-217072 Nov. 26, 1984 84-2 CPD 575  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest to GAO after denial of protest by contracting agency will not be considered if initial protest was untimely.

B-217100 Nov. 26, 1984 84-2 CPD 576  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER

Protest that awardee is unable to provide a typewriter currently in production, as required by solicitation, is untimely where filed more than 10 days after protester became aware of specific model to be provided by awardee.

B-215461 Nov. 27, 1984 84-2 CPD 577  
CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS--  
EVALUATION--TECHNICAL ACCEPTABILITY

Contracting officer properly rejected technical proposal submitted under first step of two-step formally

advertised procurement since proposal was reasonably determined to be unacceptable for valid technical reasons under stated evaluation criteria.

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR ERRONEOUS  
ADVICE, CONTRACT ACTIONS, ETC.*

An agency's acceptance of a proposal in a prior negotiated procurement does not mean that the same agency's rejection of a similar proposal in a subsequent two-step formally advertised procurement is arbitrary when the record indicates there was a reasonable basis for the rejection.

*B-216490 Nov. 27, 1984 84-2 CPD 578  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER*

Protest to GAO filed more than 10 days after protester knew of basis for protest is untimely and will not be considered.

*B-216994 Nov. 27, 1984 84-2 CPD 579  
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Protest based on allegations that are supported only by the protester's speculations and are denied by the procuring agency is denied because protester has not met its burden of proof with regard to the facts that are essential to its case.

*B-217001 Nov. 27, 1984 84-2 CPD 580  
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION*

GAO will dismiss a protest where the material issues are before a court of competent jurisdiction, the protester has not requested that the court seek a GAO opinion, and the court has not otherwise expressed an interest in receiving GAO's views.

*B-217045 Nov. 27, 1984 84-2 CPD 581*  
*OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--POLICY*  
*MATTERS--NOT FOR GAO REVIEW*

Determination under Office of Management and Budget Circular No. A-76 to contract for services rather than have them performed in-house is a matter of executive branch policy not reviewable pursuant to a bid protest filed by a federal employee.

*B-205208 Nov. 28, 1984*  
*CONTRACTS--COST ACCOUNTING--COST ACCOUNTING STANDARDS*

GAO comments on a proposed Defense Acquisition Regulatory Council plan for the maintenance and promulgation of Cost Accounting Standards (CAS) by noting that the proposed plan does not alleviate GAO's concerns that promulgation and maintenance of the CAS be independent of the procurement process and be accomplished by those with sufficient accounting expertise and experience to maintain the integrity of the CAS.

*B-214225.2 Nov. 28, 1984 84-2 CPD 582*  
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT*  
*ESTABLISHED*

GAO will not reverse or modify a prior decision where the protester fails to provide in its request for reconsideration new evidence or legal arguments which show that the decision was erroneous.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*RECONSIDERATION REQUESTS--TIMELINESS*

Where protester in its request for reconsideration includes a new ground of protest raised more than 10 working days after protester knew or should have known the basis for it, such ground is untimely and provides no reason to reverse or modify a prior decision.

B-215412.2 Nov. 28, 1984 84-2 CPD 583  
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--  
SOLICITATION CANCELED

Protest against specifications is academic and will not be considered by GAO where the contracting agency cancels the solicitation containing the specifications.

B-216719 Nov. 28, 1984 84-2 CPD 584  
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL  
SUBCONTRACTORS--RESTRICTIVE SPECIFICATION ALLEGATION

Potential subcontractor is not an interested party entitled to protest the rejection of a prospective prime contractor's proposal or to protest the alleged restrictiveness of a solicitation where its protest is not filed prior to the closing date for receipt of proposals.

B-216897 Nov. 28, 1984 84-2 CPD 585  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER

Protest that sole-source award of protest was improper is untimely where filed more than 8 months after date of publication of notice in Commerce Business Daily (CBD) of decision to negotiate with one source, since protester is charged with constructive notice of CBD announcement and protest was not filed within 10 working days after basis of protest was known or should have been known.

B-217085 Nov. 28, 1984 84-2 CPD 586  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest that late best and final offer was improperly rejected is dismissed as untimely because it was received by GAO more than 10 working days after the protester received written notice from the agency of the rejection and the reason for it.

*B-217102 Nov. 28, 1984 84-2 CPD 587*  
*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY*  
*DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

GAO generally will not review a contracting officer's determination of nonresponsibility with respect to a small business bidder since by law the Small Business Administration is empowered to determine conclusively that a small business firm is responsible.

*B-213310.2 Nov. 30, 1984 84-2 CPD 588*  
*BIDDERS--QUALIFICATIONS--CORPORATE AUTHORITY*

Bid submitted in a corporate name may be accepted even though the corporation had not paid its Ohio franchise tax at the time of bid opening and was therefore subject to having its articles of incorporation canceled because Ohio had not in fact proceed with cancellation and the bidder paid the tax prior to award.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST*

Where, in a protest filed 2 months prior to bid opening, the then-incumbent contractor questioned whether the historical workload figures in the IFB were the most current available and then withdrew its protest prior to bid opening, and the current protester was a party to that earlier protest, the current protester may not revive the same issue and again protest the currency of the solicitation historical workload figures 3 months after bid opening, since it gained actual notice of the alleged deficiency through its participation in the earlier protest.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL*  
*PROTEST BASIS*

New bases of protest presented after filing of initial protest must independently satisfy timeliness criteria. Consequently, when initial



protest questions propriety of one of the low bidder's representations, subsequent protest questioning propriety of other representations filed 3 months later is untimely.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Post-bid opening protest alleging that it would be improper to permit contractor to commence performance without required security clearances is untimely because that situation was anticipated in the solicitation, which provided for federal employees to screen correspondence for classified materials and to accompany the contractor's personnel in secure areas, pending clearance. If the protester thought such an arrangement improper, it was incumbent upon it to protest the solicitation provision prior to bid opening.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONFLICT OF INTEREST  
STATUTES*

Protest that award to firm which employs a former government employee resulted in that individual's violation of the Ethics in Government Act of 1978 (18 U.S.C. 207), a criminal statute, does not come within GAO's jurisdiction, since the interpretation and enforcement of criminal laws are for the Department of Justice. GAO's role is to determine whether the former employee's presence resulted in bias on behalf of the awardee, and the protester has not offered evidence of that situation.

*B-215028 Nov. 30, 1984 84-2 CPD 589  
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

The protester has the burden of proof when misconduct on the part of government officials is alleged and GAO will not rely on inferences alone to find such misconduct.

B-215028 Nov. 30, 1984 84-2 CPD 589 - Con.  
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES-  
BETWEEN PRIVATE PARTIES

GAO will not resolve disputes between private parties involving alleged misuse of proprietary data.

B-215973 Nov. 30, 1984 84-2 CPD 590  
BIDS--LATE--MODIFICATION--ACCEPTANCE

Agency did not act improperly in accepting a late modification of the otherwise successful bid since reduction in price benefited the government and acceptance of the reduction did not affect the relative standing of the bidders.

BIDS--MISTAKES--CONTRACTING OFFICER'S ERROR DETECTION DUTY--  
NOTICE OF ERROR

Bidder was not denied an adequate opportunity to present its mistake-in-bid claim where the request for verification revealed the substantial disparities between the bids and between the government estimate and the mistaken bid and where the bidder did not submit its claim and supporting documents until 12 days after discovering the nature of the alleged mistake and being notified of the verification request.

BIDS--MISTAKES--CORRECTION--DENIAL

Where bidder claimed that it had incorrectly totaled the estimated costs of performance on its worksheets and had then discounted the resulting totals in order to obtain the bid price, the inability to ascertain what the discount would have been had the bidder known the correct totals would not, by itself, have justified the agency's refusal to permit correction, since the probable upper range of uncertainty--that is, no discount at all--would still have left the bid substantially below the next low bid.

B-215973 Nov. 30, 1984 84-2 CPD 590 - Con.  
BIDS--MISTAKES--INTENDED BID PRICE UNCERTAINTY--"CLEAR AND  
CONVINCING EVIDENCE" OF ERROR

Agency did not lack a reasonable basis for finding that evidence of the asserted mistake, of the manner in which the mistake occurred and of the intended bid price was not the clear and convincing evidence required for correction. Bidder's explanation that the estimated costs of performance had been incorrectly added on the worksheets used to prepare the bid was questionable because the worksheets and the affidavits submitted by the bidder suggest that the bidder in fact knew the correct totals.

BIDS--MISTAKES--INTENDED BID PRICE UNCERTAINTY--CORRECTION  
INCONSISTENT WITH COMPETITIVE BIDDING SYSTEM

Despite the immediate cost savings available under the bid if corrected, it would have been contrary to the maintenance of the integrity of the competitive bidding system to have permitted correction since the agency reasonably concluded that the evidence submitted or otherwise available did not constitute the clear and convincing evidence required for correction of the mistake in bid.

CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD

Alleged agency failure to follow regulations concerning the making of an award notwithstanding the pendency of a protest does not affect the validity of the otherwise proper award.

B-215991 Nov. 30, 1984 84-2 CPD 591  
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--  
WAIVED AS MINOR INFORMALITY

Protest that agency improperly refused to reject low bid as nonresponsive for failure to acknowledge an amendment is denied where the solicitation, through the incorporation by reference of various standard military specifications, already included

provisions setting forth the same requirements as set forth in the amendment. An amendment which merely clarifies an existing solicitation requirement is not material and, accordingly, a bidder's failure to acknowledge such an amendment is waivable as a minor informality.

*B-216312 Nov. 30, 1984 84-2 CPD 613  
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS-- SPECIFICATIONS--  
RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED*

Protest that solicitation is merely a reissuance of one that was canceled after the same firm protested that the specifications were unduly restrictive and that the new solicitation retains the same restrictions is dismissed. The new solicitation, while it is for similar equipment, in fact is not a reissuance of the prior one; the bases for the specifications in the two solicitations are significantly different; and the protest otherwise fails to specify any deficiencies in the current solicitation.

*B-216366 Nov. 30, 1984 84-2 CPD 614  
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--  
PROTESTER NOT IN LINE FOR AWARD*

Where the award of a contract is to be made to the low offeror, a protest from the third low offeror under an RFP is dismissed, since, in the absence of any indication that the second low offeror is in fact ineligible for award, the protester would not be next in line for the award even if its protest were sustained. In this circumstance, the protester lacks the requisite direct and substantial interest in the award to be considered an "interested party" under GAO's Bid Protest Procedures.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS  
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

A protest challenging the small business size status of the apparent successful offeror is not for GAO's consideration, since exclusive authority to deter-

mine such matters is statutorily vested with the Small Business Administration.

*B-216841 Nov. 30, 1984 84-2 CPD 593  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review protests concerning affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have been misapplied.

*CONTRACTS--AWARDS--NOTICE--TO UNSUCCESSFUL BIDDERS--  
ERRONEOUS STATEMENTS--EFFECT ON AWARD*

Contracting officer's failure to provide unsuccessful bidder notice of contract award is a procedural deficiency which does not affect the validity of the award.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

GAO Bid Protest Procedures require that solicitation improprieties obvious on the face of the solicitation be protested before bid opening.

*B-216986 Nov. 30, 1984 84-2 CPD 615  
CONTRACTS--NEGOTIATION--COMPETITION--ADEQUACY*

Protest against agency refusal to reopen competition after failing to solicit protester is summarily denied where: agency made a significant effort to obtain competition; agency did not deliberately attempt to preclude protester from competition; and there is no showing that the award will not be at a reasonable price.

*B-216986 Nov. 30, 1984 84-2 CPD 615 - Con.  
CONTRACTS--NEGOTIATION--COMPETITION--FAILURE TO SOLICIT  
PROPOSALS FROM ALL SOURCES*

Requirement of Small Business Investment Act of 1958, 223(a), 15 U.S.C. 637b (1982), that a small business, upon its request, shall be provided with a copy of bid sets and specifications concerning a particular contract, without exception, is only applicable where an agency refuses a small business request and does not apply where agency acceded to the request by mailing requested information which was never received by the small business.

*B-216243 Nov. 30, 1984 84-2 CPD 592  
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--  
EXHAUSTION OF ADMINISTRATIVE REMEDIES*

GAO will not consider protest against cost comparison calculation under Office of Management and Budget Circular No. A-76 until the protester has exhausted the contracting agency's administrative review procedures.

*TRANSPORTATION LAW*

*B-212279 Nov. 13, 1984 84-2 CPD 518*

*TRANSPORTATION--CARRIERS--OPERATING AUTHORITY--ABSENCE--  
PAYMENT BASIS*

Where a carrier transports goods without an effective tender on which to base its charges, the carrier may be paid quantum meruit on the basis of the usual or going rates for the same services.

*TRANSPORTATION--RATES--SECTION 22 QUOTATIONS--CANCELLATION,  
ETC.--EFFECT*

Where carrier cancels tender in accordance with tender provision, cancellation takes effect even though the replacement tender has been rejected.

*TRANSPORTATION--RATES--SECTION 22 QUOTATIONS--OFFER AND  
ACCEPTANCE--REJECTION OF OFFER*

Where Military Traffic Management Command returns carrier's rate tenders as insufficient, the tenders have been rejected and may not later be used as a basis on which to bill for transportation charges.





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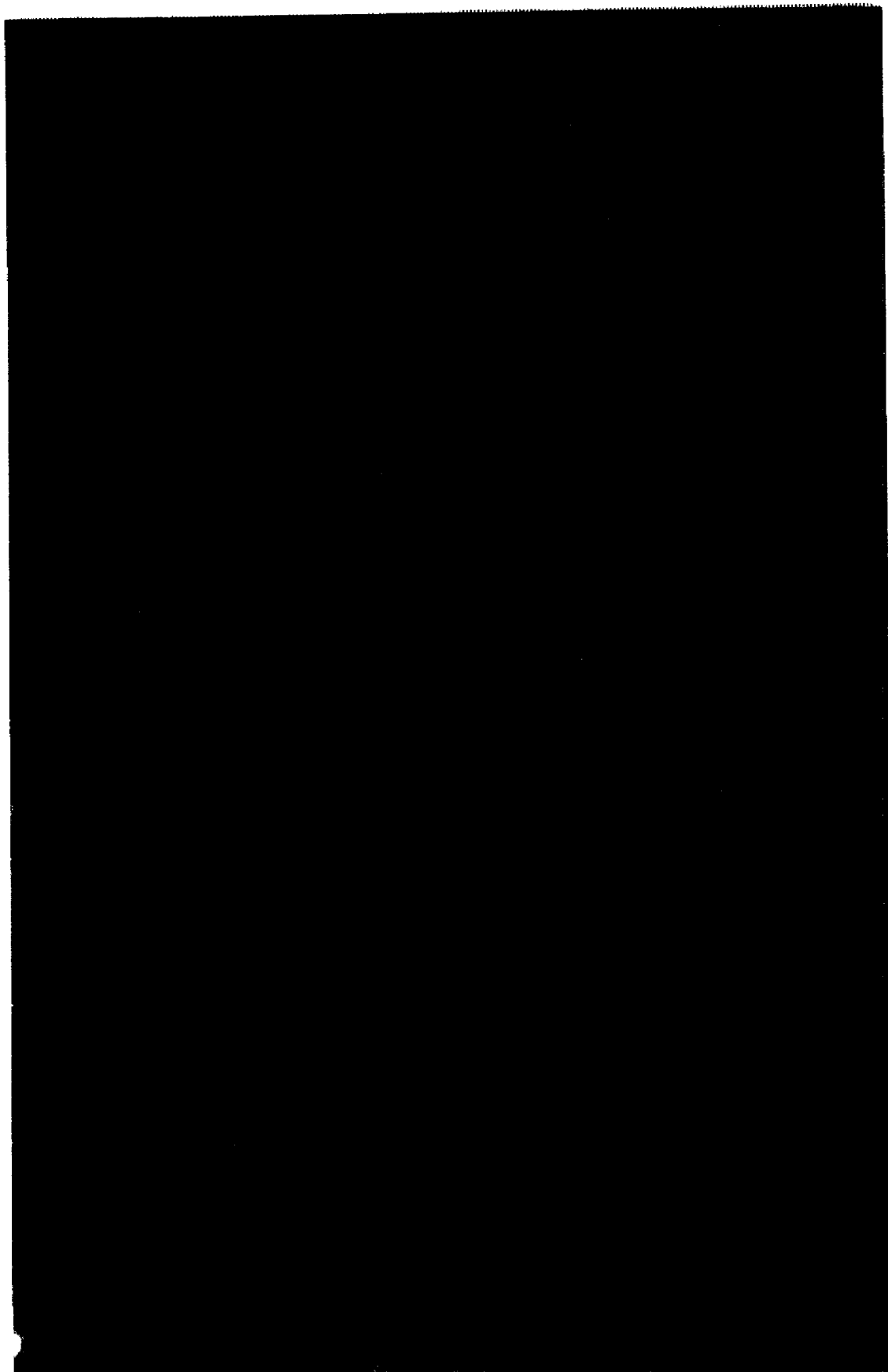


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